

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

TRAVELERS INSURANCE
INDIVIDUALLY AND A/S/O DACON
CORP. AND A/S/O CONDYNE
VENTURES,

Plaintiff,

v.

GENESIS INDEMNITY INSURANCE
AND TIG INSURANCE,

Defendants.

C.A. NO.: 05-11490JLT

**ANSWER OF DEFENDANT, TIG INSURANCE COMPANY,
TO PLAINTIFF’S COMPLAINT FOR DECLARATORY
JUDGMENT, AND DEMAND FOR TRIAL BY JURY**

The defendant, TIG Insurance Company (hereinafter “the defendant”), responds as follows to plaintiff’s Complaint for declaratory judgment.

FIRST DEFENSE

The plaintiff’s Complaint fails to state a claim against the defendant, TIG Insurance Company, upon which relief can be granted.

SECOND DEFENSE

The defendant, by its counsel, responds to the allegations in the Complaint by corresponding numbered paragraphs as follows:

PARTIES

1. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

2. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

3. The defendant admits that it is a California corporation with administrative offices in Manchester, New Hampshire. The defendant further admits to having a principal place of business in Irving, Texas.

4. The defendant objects to this paragraph of the Complaint on the grounds that it asserts conclusions of law to which no response is required, nor given.

FACTS

5. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

6. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

7. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

8. Admitted.

9. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

10. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

11. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

12. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

13. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

14. The defendant is without knowledge or information sufficient to either admit or deny the allegations contained in this paragraph of the Complaint, and thereby calls on plaintiff to prove same.

15. Denied. The obligations of TIG Insurance Company are as set forth in the policy of insurance that it issued to its policyholder, which is the best evidence of the coverages afforded thereunder.

COUNT I
(DECLARATORY JUDGMENT VS. GENESIS AND TIG)

16. The defendant hereby incorporates by reference its responses to paragraphs 1 through 15 of the Complaint as if set forth at length herein.

17. Denied as to the defendant, TIG Insurance Company. The obligations of TIG Insurance Company are as set forth in the policy of insurance that it issued to its policyholder, which is the best evidence of the coverages afforded thereunder. Further answering, the remaining allegations in this paragraph pertains to another defendant and no response from this defendant is required.

WHEREFORE, the defendant, TIG Insurance Company, prays that this Court:

- a. Enter judgment for the defendant, TIG Insurance Company, dismissing all claims against it;
- b. Award it expenses and attorneys' fees; and
- c. Grant such further relief as the Court may deem just.

COUNT II
(LEGAL AND EQUITABLE SUBROGATION VS. GENESIS)

18. The defendant hereby incorporates by reference its responses to paragraphs 1 through 17 of the Complaint as if set forth at length herein.

19. The allegations in this paragraph pertains to another defendant and no response from this defendant is required.

20. The allegations in this paragraph pertains to another defendant and no response from this defendant is required.

21. The allegations in this paragraph pertains to another defendant and no response from this defendant is required.

COUNT III
(EQUITABLE CONTRIBUTION VS. GENESIS)

22. The defendant hereby incorporates by reference its responses to paragraphs 1 through 21 of the Complaint as if set forth at length herein.

23. The allegations in this paragraph pertains to another defendant and no response from this defendant is required.

FIRST AFFIRMATIVE DEFENSE

Plaintiff lacks standing to bring this action.

SECOND AFFIRMATIVE DEFENSE

There is no justiceable controversy to support a claim for jurisdiction.

THIRD AFFIRMATIVE DEFENSE

Any claim for coverage presented under this policy is subject to the terms, conditions, limitations and exclusions contained therein.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent that defendant's policyholder failed to cooperate with it or breached any conditions precedent or subsequent to coverage.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent that any other insurance is applicable to which this insurance would be excess.

SIXTH AFFIRMATIVE DEFENSE

Any liability on the part of this defendant is limited to the policy limits set forth in the policy and may additionally be subject to certain claim deductibles.

WHEREFORE, the defendant, TIG Insurance Company, respectfully asks that this action be dismissed against it, and that it be awarded its reasonable costs and attorney's fees for responding to this claim, and for such other and further relief as this Court may deem just and proper.

JURY DEMAND

The defendant, TIG Insurance Company, hereby demands a trial by jury as to all counts of the Complaint.

Defendant,
TIG INSURANCE COMPANY
By its Attorneys,

/s/ Scott Douglas Burke
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Dated: August 19, 2005